

May 11, 2009

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
MAY 11, 2009

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
KATHLEEN LOCEY
FRANCIS BEDETTI, JR.
PAT TORPEY

ALSO PRESENT: ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

NICOLE JULIAN
ZONING BOARD SECRETARY

ABSENT: JAMES DITTBRENNER

REGULAR_MEETING

MR. KANE: I'd like to call to order the May 11, 2009 meeting of the New Windsor Zoning Board of Appeals.

APPROVAL_OF_MINUTES

MR. KANE: Motion to accept the minutes of April 13, 2009 as written.

MR. BEDETTI: So moved.

MS. LOCEY: I'll second that motion.

ROLL CALL

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MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

PRELIMINARY_MEETINGS:

STEVEN_DWEK_(09-15)

MR. KANE: Tonight's first preliminary meeting is Steven Dwek. Request for sign variance for proposed 12 foot by 26 foot facade sign which exceeds the permitted 2.5 foot x 10 ft. A variance of 9.5 foot height and 16 foot width is required at 565 Union Avenue. Come on up, tell us exactly what you want to do. In this town we actually hold two meetings, everything has to be decided in a public forum. The reason we do it is that if we need more information than what you bring with you you have the ability to bring it and we'll tell you what we need and what you're missing, just makes it a lot easier. In other towns if you're not prepared and ready to go you have a six month wait. So we'll ask all the preliminary questions and figure out what we need from here. Just speak loud enough so the young lady can hear you. Your name and address?

MR. DWEK: My name is Steve Dwek, I'm representing the old YWCA New Windsor Fitness looking to replace the sign, we actually took off the YWCA sign last year and want to put graphics of the types of programs that we have in there, we just want to let people know we have a pool, summer camp, child care in there. The reason for the variance is if you remember the old YWCA sign it sits on the sign facade that's pretty large itself and it's set back pretty far from the road so to kind of cover that sign facade the proposed sign needs to be a certain size and similar just to be able to see it from the road.

MR. KANE: And all of this right in here is what's going to be on the sign?

MR. DWEK: Yes, kind of some graphics to say what's in there and graphics are not clear we'll just have the words.

MR. KANE: And if I remember correctly, it's not the individual dimensions of these signs but that whole area is what New Windsor does, the building department squares it out so that would be the reason why it seems a little excessive.

MR. DWEK: I think I wouldn't say excessive, I would say needs a variance.

MR. KANE: Okay, good enough.

MR. TORPEY: So it's not going to say the YMCA?

MR. DWEK: It's not.

MR. TORPEY: It's not going to be called nothing?

MR. DWEK: It will but the purpose is to say what's in the building, the nice thing about the YWCA you knew a pool was in there just by seeing the YWCA on the front but I mean there's no windows in the bidding so you don't really know what's in there so we really want to put front and center here's what's in here and we do things like the summer camp football, after-school fitness and the pool and they're even having individual brand names, call it camp something or performing school something, the community fitness center.

MR. TORPEY: Okay.

MR. KANE: For the public hearing could you give me the distance from the road?

MR. DWEK: Definitely.

MR. KANE: To where the sign front is?

MR. DWEK: Good enough.

MS. LOCEY: No questions.

MR. TORPEY: It's pretty far back, sounds good.

MR. KANE: New York State likes numbers.

MR. KRIEGER: Too far is subject to interpretation.

MR. DWEK: All right.

MR. KANE: Any illumination on the sign?

MR. DWEK: There is and there always has been.

MR. KANE: Back lit?

MR. DWEK: No, it's not back lit.

MS. LOCEY: Spot lit?

MR. DWEK: Yeah, it's always been there.

MR. KANE: I meant shining up.

MR. DWEK: Yes.

MR. KANE: Any further questions at this time from the board?

MR. BEDETTI: Will you have a freestanding sign out in front of the place or will that be the only sign?

MR. DWEK: Well, I have a little freestanding sign, once we figure out we have this little thing right at on the street side, you guys have one in front of the Town Hall as well, just says summer camp registration we'll put up a sort of a small sign there but the big sign is just to say what this building is.

MS. LOCEY: Well, this is an application for the big

sign, it has nothing to do with the freestanding sign that you may or may not put in front of the building at a later date?

MR. DWEK: Okay.

MS. LOCEY: So--

MR. DWEK: One step at a time.

MS. LOCEY: Yes.

MR. KANE: Since there's one business you're allowed one in any case.

MS. LOCEY: Right.

MR. KANE: Any further questions? I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Steven Dwek for the New Windsor Fitness Center as detailed on the New Windsor Zoning Board of Appeals agenda dated May 11, 2009.

MR. TORPEY: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. DWEK: Just to recap, I'm going to bring one piece of information, the physical distance from the street to the sign?

MR. KANE: That's all we need for now.

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MS. LOCEY: I think he needs to check in with the secretary as far as mailings and that sort of thing.

MR. KANE: Here's your list.

MS. JULIAN: On the bottom it says how many envelopes and the amount that you still owe.

MR. DWEK: And I pay?

MS. JULIAN: Come to see me tomorrow.

MR. KANE: Have a good evening.

EDWARD_AND_MARIE_COLLARD_(09-16)

MR. KANE: Next is Edward and Marie Collard request for an interpretation for a single family dwelling with two kitchens at 112 Bethlehem Road in an R-1 zone. Good evening, and you heard what I said before about the preliminary meeting, okay, so just state your name and address and speak loud enough for the young lady to hear you.

MR. COLLARD: My name is Ed Collard, 112 Bethlehem Road, New Windsor, New York 12553.

MR. KANE: You're on.

MR. COLLARD: I'd like to put a sink in my basement.

MR. KANE: And that's how it starts.

MR. COLLARD: I put a sink in my basement and it's, it does look like a kitchen, I had old cabinets and an old sink I put it in there to use it for utility purposes and if the power went out I could wash and I also got a stove down there too and it's in the back end of my garage and that's basically it.

MR. KANE: I'm old enough where I grew up with the summer kitchens so I understand. Basically what the building department is doing with this is that they want to alleviate any problems of having illegal two family houses with illegal apartments, that kind of stuff, so they bring this up in front of us, we get everything on record, make sure it's the way we want it and it really doesn't turn into that much of a problem except you have to pay to be here.

MR. COLLARD: It was never put in with the intent to make a two family.

MR. KANE: That's what we're going to ask you. Only

one gas service and electric service to the house?

MR. COLLARD: Yes.

MR. KANE: And it's--

MR. COLLARD: Yeah, one LP gas tank, yes, and electric service, one.

MR. KANE: Your intent on this is to use it as a either a utility kitchen or a second kitchen and not for the purpose of making an apartment?

MR. COLLARD: Never.

MR. KANE: Okay, and your use of the home is for a single family home and will always be a single family home?

MR. COLLARD: Always will be as long as I'm in it.

MR. KANE: Need anything else at this point?

MR. KRIEGER: No.

MR. KANE: It's really basically to get everything on the record is what it comes down to. The only time we run into a problem is if there's separate electric service coming in, separate gas service coming in then it gets a little dizzy, usually we want them to change it into one so we can be sure it's being used that way. I'll accept a motion if there's no other questions.

MR. BEDETTI: I will make a motion that we schedule a public hearing for Edward and Marie Collard for an interpretation single family dwelling with two kitchens.

MS. LOCEY: I'll second the motion.

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ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MS. JULIAN: That's for you.

MR. KANE: That's your next steps, just read that, if you have any questions, give Nicole a call tomorrow.

PUBLIC HEARINGS:

ALLEN & STACY KELLER (09-09)

MR. KANE: Public hearings, Allen and Stacy Keller request for a 7 foot front yard setback for proposed 6 foot by 36 foot front porch on 21 Hilltop Drive. At this point, I will ask if there's anybody in the audience here for this particular hearing? Okay, go ahead.

MR. KELLER: Yes, my name is Allen Keller, 21 Hilltop Drive, New Windsor and I'm looking to put a 6 x 36 foot open porch on the front of the house, it would encroach on the current setback so we're asking for a 7 foot variance.

MR. KANE: Cutting down any trees or substantial vegetation in the building of the porch?

MR. KELLER: No.

MR. KANE: Creating any water hazards or runoff?

MR. KELLER: No.

MR. KANE: Any easements running through where you want to put the porch?

MR. KELLER: No.

MR. KANE: The porch is coming out 6 foot, will that make the front of your house extend any closer to the road than the other homes that are on your side of the street?

MR. KELLER: Not excessively, no.

MR. KANE: And let the record show that you show other homes in your neighborhood with front porches similar

to yours or the one you want to build.

MR. KELLER: Yes.

MR. KANE: And the 6 foot with on that you would, you believe that to be the minimum that you could go to have a serviceable front porch?

MR. KELLER: Yes.

MR. KANE: Further questions from the board? At this point, I will open it up to the public and ask if there's anybody here that wants to speak on this particular meeting? Seeing as there's not, we'll close the public portion of the meeting and ask Nicole how many mailings we had.

MS. JULIAN: On April 16, 2009, I had 65 mailings with no response.

MR. KANE: No further questions, I'll accept a motion.

MS. LOCEY: I will offer a motion to grant the requested variances on the application of Allen and Stacy Keller for a 7 foot front yard setback at 21 Hilltop Drive.

MR. TORPEY: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

JOHN_CHEWENS_(09-11)

MR. KANE: Next is John Chewens request for interpretation and/or use variance for single family dwelling with two kitchens at 81 Blooming Grove Turnpike in an R-4 zone.

MR. CHEWENS: Good evening, John Chewens, 100 Commerce Drive, New Windsor, New York REMAX Benchmark, I'm the realtor for the seller of the property. You guys asked at the last hearing you guys asked that the service be removed and made one and that was done but in my ignorance I did not know there actually was a purpose for the two boxes and I didn't know it until the electrician came to take it out and it was because there were, they had a Federal Pacific box in the original box and when they made the addition they had 200 amp service, when they changed the Federal Pacific box they made it a 200 amp service, in order to have two 200 amp services you need to have two so they removed one whole box and they added 100 amp service so now there's only one service going into the house.

MR. KANE: I just feel more comfortable with that.

MR. CHEWENS: That's fine.

MR. KANE: Can we keep these?

MR. CHEWENS: That's all for you, I gave you four copies, I have another one if you need it, five.

MR. KANE: No, just going to add one to the record. So there's one service now electric service and one gas service coming into the home?

MR. CHEWENS: Yes, this was the way it was and this is the way it is now. The only thing we didn't paint it cause I wanted you to see how it came out, that's it being removed on the ground.

MR. KANE: Not worried about it. Your intent is to use this and actually sell it as a single family home?

MR. CHEWENS: Yes.

MR. KANE: It will always be considered a single family home?

MR. CHEWENS: Yes and I put that in the listing and I gave that to you the last time I was in.

MR. KANE: Any further questions from the board? Anyone in the audience wishing to comment? Pat's going to get your name and address just for the record for the stenographer. And at this point, I will open it up to the public, my apologies.

MR. TRIFILO: My name is Robert Trifilo, I live right next door, 79 Blooming Grove Turnpike, very familiar with the house and the floor plan, not only does it have two kitchens, it has two driveways, two main entrances, it's very easily an illegal two family. I just want to know what, you know, I'm very good friends with the people that own it. Right now, he's intending to sell it as a single family house but once they sell it.

MR. KANE: Once they sell it they're here on record stating that the use is going to be for a single family home, what they're doing with bringing this in that it gives the building department the ammunition to go back in legally and fine whoever's in there and take them to task.

MR. KRIEGER: Let me if I may let me put it, there's nothing that this board can do to prevent somebody from breaking the law in the future.

MR. TRIFILO: I understand that.

MR. KRIEGER: What they have done, what the board has done in trying to have one service and so forth and have a planning board like declaration that it is a single family house if a complaint is filed in the future and the building department has to go in the burden of proof is going to be on them to prove that it should not be a two family house. This makes it very easy for them to meet that burden of proof cause they have to produce a certified copy of the minutes where the owners in this case the owner's representative said that it is a single family house and it's done.

MR. TRIFILO: You know, if you know, say there's a mother-daughter supposedly there's a mother-daughter purchasing the house right now, if they live in one part of the house and claim that their other sister and her husband are living in the other part of the house which they may or may not be and they're paying rent in cash.

MR. KANE: If it's immediate family there's no answer to that, not immediate family. If it's not immediate family there's definitely an answer to that, a complaint by you to the building department.

MR. TRIFILO: You have to understand my concern.

MR. KANE: That's why we decide.

MR. TRIFILO: Two front doors, two door bells, there's two everything over there.

MS. KANE: This is why we brought, these people are brought in front of us so we can get it on record and they are under oath and once they say it it's part of the record. If it's found out that's being abused later then they're taken to court.

MR. CHEWENS: Mr. Trifilo was present here for the

first meeting, I just wanted to mention that we had stated that we were not selling it as a two family residence nor could it be rented in the future right on the listing.

MR. KANE: We put that in the record, it's in the official record.

MR. CHEWENS: We want to protect the neighbors.

MR. KANE: We also force them to pull out the second meter that was there, there's just no way so we're trying to cover every base to stop that kind of thing from happening and since there's no way to really prevent it the only thing that you can do is go after them afterwards and that's what we're doing here is getting all the information, everything down on record so that the building department has that ammunition later.

MR. TRIFILO: What steps should I take if I suspect?

MR. KRIEGER: Call the building department and file a complaint.

MR. KANE: They'll go out and check it out, they're very serious about it, when they walk in and just see a utility sink in the basement which isn't the case here, it's a second kitchen but we have a lot of them where they just put a sink in and that's it, there's no power for a refrigerator or anything else, they still come here, we still get everything on file there so you would just call the building department and then it's right on file.

MS. LOCEY: If this board makes an interpretation that it's a single family home with two kitchens, it gives the code enforcement officers some teeth to enforce any infraction i fit's being used as a two family house, it's in black and white that that's illegal, this board

does not allow.

MR. CHEWENS: Traditionally selling the property what we used to do we removed the stove, we used to put a piece of sheetrock over where the kitchen is and sell the house, we're trying to do this legal, we're trying to do it up front, we're not trying to hide anything.

MR. TORPEY: We're on top of them.

MR. CHEWENS: We when get a listing rather than fighting everybody we try to work with everybody and we clearly stated in the listing and I gave them that this was never going to, had no intention of being a rental property.

MR. KANE: That's exactly why the building department gets it on record.

MS. LOCEY: If some, if the homeowner violates that then it's up to you or some other neighbor to bring that to the attention to the code enforcement people so it can be enforced as just a single family home.

MR. KRIEGER: Could somebody break the law in the future, of course they could, there's absolutely nothing this board can do to prevent that, but it can make that as difficult as possible and be, give the building inspector the ammunition that he needs. If he files a complaint hypothetically in the future a complaint is made against the then owners and a building inspector has to go to court and prove beyond a reasonable doubt the first offense that he's going to be met with is well, we went to the zoning board and they gave us permission for a two family house. Well, the object of this exercise is to make it crystal clear to anyone reading to see the decision or the minutes that they did not get permission for a two family house, that it's a single family house.

MR. KANE: Nor can they say it was sold to them as a two family house, it's on the record and the listing was there that everything was done as a single family all the way through, that's why we started going through this.

MR. TRIFILO: If it was proven they could force the tenants to move out?

MR. KANE: Absolutely and--

MR. CHEWENS: Mr. Trifilo wasn't here the first meeting but he lives directly next door and he's very familiar with the owners and he can probably tell you that there was, it was never rented out, it was never used for anything but a mother-daughter situation cause I had no one here the last time to actually tell you that but he actually lives right next door, actually has helped us in selling the property, getting the owners that don't live locally.

MR. KANE: This is, you're going to see a lot more of this.

MR. CHEWENS: My mother-in-law is moving in with me, she can't afford the taxes anymore.

MR. TRIFILO: How long does the process take to go through?

MR. KRIEGER: There are so many variables, it's hard to say.

MR. TORPEY: They're on top of this right away, fire inspector would be out there.

MR. KANE: Building and fire inspector goes out, it's an unsafe thing, I can't really speak to that.

MR. KRIEGER: It's a court matter and that by

definition is a fight, nobody can predict how long a fight is going to take and how hard the combatants are going to fight.

MR. KANE: Sir?

MR. DIVINCENZO: Joe DiVincenzo, 75 Blooming Grove Turnpike in New Windsor, I want to pick up on the last thing that you spoke of then it goes to court and it's a fight, is it a fight between the town and the homeowner?

MR. KRIEGER: Yes, once the complaint is filed the complainant is not a party, the complainant files a complaint and it's up to the governmental authorities to prosecute.

MR. TORPEY: We've got everything on record.

MR. DIVINCENZO: Sometimes that doesn't happen. You've answered most of my questions but Mr. Chewens said that usually with the second kitchen that he would take a stove out, they throw a piece of plywood down, is there anything within the power and authority of the zoning board to order that the kitchen be removed in its entirety if it's going to be sold as a single family home?

MR. KANE: Sure, we can deny the application which is why he's here.

MR. DIVINCENZO: My preference is to have the whole second kitchen removed.

MR. KANE: Anybody else?

MR. MAGANA: Nemias Magana. I'm fine with the decision that you take about the complaint.

MS. LOCEY: Are you buying this house?

MR. TORPEY: He's a neighbor.

MS. LOCEY: And you're asking us if a complaint is registered how long does that take?

MR. MAGANA: 25 Faye Avenue, New Windsor, I'm fine for the decision that you take for the complaint. I say I'm good for whatever you do.

MR. KRIEGER: He will go along with whatever the board decides.

MR. MAGANA: Thank you, sir.

MR. KANE: Anybody else? At this point, we'll close the public portion of the meeting and bring it back to the board. Any further questions? If no further questions, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we grant the request and that the interpretation is that this is a single family house with two kitchens, that it will not be marketed as anything other than a single family house nor can it be rented as anything other than a single family house.

MS. LOCEY: That this is the application of John Chewens for LaMont and the location is 81 Blooming Grove Turnpike. And with that, I'll second that motion.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

CATHERINE_SCULLY_(09-10)

MR. KANE: Next public hearing is Catherine Scully request for 6 foot stockade fence located between the principal building and the street at 24 Park Hill Drive in an R-4 zone. I will ask if there's anybody here for this particular hearing? Okay, your name?

MS. SCULLY: Catherine Scully, 24 Park Hill Drive. So I'm requesting a variance to install a 6 foot fence on my side yard which I understand is also considered a front yard which is why I need the variance.

MR. KANE: Right, for the record you're on a corner property so you're considered to have two front yards.

MR. KRIEGER: So legally you have two front yards even though visually it appears you have only one.

MS. SCULLY: I have a measurement for you, I believe you wanted the measurement from the fence to the roadway which would be Summit Drive, it's 9'7" actually.

MR. KANE: Nine foot seven?

MS. SCULLY: A little bit more but--

MR. KANE: Approximate is good. And the building of the fence is not going to inhibit the view of any drivers coming down that road?

MS. SCULLY: Not at all.

MR. KANE: Cutting down any trees or substantial vegetation?

MS. SCULLY: No.

MR. KANE: Creating any water hazards or runoffs?

MS. SCULLY: No.

MR. KANE: Any easements going up where you want to put the fence?

MS. SCULLY: No.

MR. KANE: And actually the reason you're here is because the fence is going, technically going in a front yard?

MS. SCULLY: Correct.

MR. KANE: Any further questions from the board? At this time, I will open it up to the public and ask once against if there's anybody here for this particular hearing? Seeing as there's not, I will bring it back to Nicole, ask how many mailings we had.

MS. JULIAN: On April 20, 2009, I had 50 mailings with no response.

MR. KANE: I'll accept a motion.

MS. LOCEY: I'll offer a motion to grant the requested variance of Catherine Scully for a 6 foot stockade fence at 24 Park Hill Drive in an R-4 zone.

MR. TORPEY: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

NEW-GEN_CONSTRUCTION_(JAMES_FINI)_(08-37)

MR. KANE: New-Gen Construction public hearing James Fini for Omat Inc. referred by the planning board request for variances for a 25,027 square foot minimum lot area, 68.79 foot minimum lot width, 19 foot side yard setback, 25.5 foot side yard setback and 25.5 foot total side yard setback for proposed single family home at Birch Street in an R-3 Zone. Anybody here for this meeting? Just going to get your name and address for the stenographer so she has it in case you want to speak.

Mr. John Bach appeared before the board for this proposal.

MS. LOCEY: Is this different from the map we had in the packet?

MR. BACH: There's a few minor changes. My name is John Bach, I'm an attorney in Goshen, New York, I'm the attorney for New-Gen Construction, Inc. who has contracted with Mr. and Mrs. Petrukhis who are here in the audience to erect a single family residence on lot 7 of the Benedict Pond Estates subdivision. This application covers two tax lots, basically tax lot 6.1 and 6.2. So there's an error in the planning board hearing notice because actually we're not requesting a lot area variance, actually the 25,000 square feet is in excess of the minimum lot area, the actual area is a combination of the two lots is 1.62 while your area requirements are 80,000 square feet so I just wanted to point that out, obviously it's inconsequential.

MR. KANE: So you do not need a lot area variance?

MR. BACH: Actually, the 25,000 is in excess and not a deficiency.

MR. KANE: Okay, so you want to make sure you cross

that off.

MR. BACH: Now, as far as the mailings are concerned two came back. As the board can see by looking at the map, this is a very odd shaped piece of property and it does encompass two lots which are being combined by the application, tax lot 6.1 and 6.2. The planning board back in 2002 had approved this subdivision which basically permitted the lot, the layout as it exists today so because of the configuration of the two lots combined into one there's very limited area at which you can locate a house. And what's been done on the map is an attempt to locate the house in the widest part of the property utilizing the more normal tax lot which is tax lot 6.2, the one in the back. Now, this results in the necessary variances for the side yards and the combination side yards and the lot width. Again, based upon the topo of the property, there's no other practical place that the house could be located and utilizing all the rest of the property. It would be impossible to purchase any additional property because the pond is in the back and if the lots across the street basically are lots 4, 5 and 6 of the same subdivision and no further subdivision of those lots are allowed. So additional property cannot be added in any way to in any way minimize the requested variances for the lot widths or for the side yards.

MR. KRIEGER: Those lots are under separate ownership anyway.

MR. BACH: That's correct, so we're requesting the necessary lot width and side yard variances to allow the erection of a single family residence of approximately 2,200 square feet. I have a schematic, the plans are here as to what house they propose to construct. It certainly will improve the neighborhood, again, it's the minimum variance that we're able to apply for and all other alternatives have been exhausted as far as additional property. I would state

that this is not a self-created hardship because the lot in effect was created by the planning board approval so, you know, we're dealing with they purchased the property as it existed back in 2002 as part of the Benedict Pond Estates subdivision.

MR. KANE: Sixteen years of doing it, that's the weirdest lot I've ever seen.

MR. TORPEY: This is a strange lot.

MR. BACH: All due respect I don't know how the planning board could ever approve a lot laid out like that, it's very strange and again it's, there are two tax lots with the division because of the sewer district, that's why there's tax lot 6.1 and 6.2.

MS. LOCEY: Can you, is there an existing house on one of these?

MR. BACH: No.

MS. LOCEY: So this outline is for a proposed house?

MR. BACH: That's currently on 6.2 but the two lots will be combined into one lot.

MS. LOCEY: Okay, they're actually proposing the lot to be larger?

MR. BACH: This is why we needed the lot area variance.

MR. TORPEY: Is this all wooded?

MR. BACH: It's wooded, yes. These are the perspective owners.

MS. LOCEY: But, I mean, you're not looking to make a lot smaller or put two lots on two?

MR. BACH: There certainly can be a note on the map that will indicate that there will be no house ever located or constructed on the old tax lot 6.1, there is no intent to do that, that would defeat the whole purpose of trying to maximize the area that's there now.

MR. TORPEY: This dotted line that goes across is really considered Cornwall and this is New Windsor?

MR. BACH: That's correct.

MS. LOCEY: School district.

MR. TORPEY: But they're going to give all the money to New Windsor.

MR. BACH: Yes, that's correct. Now, it's my understanding that at some previous time a variance had been granted by the board and it was never, this is for the board's record back in 2005 the board can previously grant the variance for the same parcel.

MS. LOCEY: As a combined lot or just 6.2?

MR. BACH: Yes.

MS. LOCEY: I wonder why they have to come back now?

MR. BACH: You're the only member on this board that was present at this meeting.

MS. LOCEY: But once a variance is granted, it goes with the land, not the owner.

MR. BACH: Apparently, the building inspector took the position that it--

MR. KANE: Actually, with that variance and correct me if I'm wrong, I do believe you have one year to act on

it and if you don't act on it and you don't renew it come back to the board and renew it for financial reasons or whatever then it expires and you don't have that, you no longer have that variance and yeah that's my name right there on the top.

MR. BACH: So obviously there's precedent, there's been no change in the code since then.

MR. KANE: Okay, and we don't need the lot area.

MR. BACH: No.

MR. KANE: I think what I'm going to do at this point is open it up to the public and hear what questions or whatever, just step up, give your name and address and ask away.

MR. BYWATER: I'm Bill Bywater, 115 Birch Drive which joins this property and at least two points I want to make tonight is that in yellow highlight you can see maybe more clearly the area that we're talking about there's an overlap, there's land that's held in adverse possession which actually eclipses the two properties, there's a stone wall over 100 years that's on each of these maps and my address has been maintained by me for 14 years and by previous sellers for over a quarter of a century.

MR. KANE: I'm not following you. You're saying that these are not connected?

MR. BYWATER: Well because on this map you can see where I have highlighted my lot and there too because this address is actually maintained this stone wall and it has been for a quarter of a century so this land is in adverse possession.

MR. KANE: You're saying they don't have legal right to this property?

MR. BYWATER: Right.

MR. KANE: You're on.

MR. KRIEGER: Well, questions of adverse possession are not within the jurisdiction of this board to grant, they can either grant or deny, there's nothing they can say about that. There's a description attached to the proposed, the actual road maintenance agreement that I have seen, I don't know whether a description has been attached or not.

MR. KANE: No.

MR. KRIEGER: But if the description is accurate and I don't know, if the description accurately describes the parcel that's being applied for then questions of adverse possession have to be decided by the Supreme Court, not by this body, this body has no jurisdiction to do that.

MR. BYWATER: And it could be that the scrap of property is just not that interesting to the people who want to build a house there, they might not have any--

MR. KANE: Again, that has nothing, really has nothing to do with us.

MR. BACH: This is not the forum to discuss that.

MR. BYWATER: But it lowers your square area with you. The second main point is my understanding there was no valid road maintenance agreement, in fact, this would be the eighth house on a private road in New Windsor and I have been living here 14 years there is no road maintenance agreement, people want to walk around and knock on houses and say can you help us do some paving this year.

MR. BACH: Where do you live?

MR. BYWATER: I'm right here, this house right here.

MR. BACH: So you also use this Birch Drive to get access to Riley Road?

MR. BYWATER: Yes.

MR. BACH: What's your legal basis for using it?

MR. BYWATER: That's a great question, this is a rectangular piece of property, 50 feet wide, that rectangular shaped piece of property has an easement over the adjoining lands and I believe you can't correct me if I'm wrong put more than seven houses on a private road and you can't get a mortgage, you can't and under your discretion put another house on a private road.

MR. BACH: Well, my clients do have a mortgage, they got a building loan mortgage from J P Morgan Chase and there are some very nebulous notes on the subdivision map which basically give the owners 4, 5, 6 and 7 access rights to Riley Road and that's on the subdivision map again that was approved by the planning board back in 2002.

MR. BYWATER: In all fairness I want everyone to know to get an oil truck or an ambulance up the street in the winter, it's meet me with the snowplow, my neighbor who's 65 with a snowplow and another guy with a shovel that's how we maintained it.

MR. PETRUKHIS: So now you're getting help.

MR. BYWATER: And that if I can have on record if you're that interested in maintaining the paving.

MR. BACH: They'd be more than happy to sit down and

talk to you about something formal.

MR. KANE: That's not something we do though.

MR. BYWATER: You can't make it a condition to have a road maintenance agreement?

MR. PETRUKHIS: We're interested in that.

MR. BYWATER: All right, good.

MR. BACH: We'll exchange numbers after.

MR. BYWATER: To get a road maintenance agreement on record, okay, third point then is when the property here Napalitano had an adjoining one developed it became a basement hazard because flattening the lot cost you thousands of dollars in damage, you came in with a video showing spilling over the stone wall into his basement and it's a peril kind of pitch from my property across the street.

MR. BACH: Sounds like a building inspector issue.

MR. KANE: So you're for or against?

MR. BYWATER: I'm against it.

MR. KANE: Thank you. Sir?

MR. MILMORE: Edward Milmore, 45 Dean Hill Road, New Windsor, New York. I live at what would have been lot 5 in the original land and there's no way that they can exit onto Dean Hill Road from that lot.

MR. BACH: They're not going to.

MR. MILMORE: But you mentioned there was availability. My big concern is you're changing the side lots, at the rear of this property is an earthen dam that's been

there for a good long time, it was a manmade earthen dam, Benedict Pond is a spring fed pond, there's no streams into it and the only way the water gets out of it there's a sewage drain just to the south of this property and I've had problems with that drain before where it's backed up and the town had to go out and do some work on it. There's also a, from that drain it runs down in a culvert further down below it runs into a swale and then into a culvert. Many of these homes to the east of this property have been flooded as a result of that so if you allow building closer to that swale or that drain or what is going to affect this earthen dam that's manmade that holds the water goes to that pond and I think that's a big concern, you know, as well as your issue with Birch Drive. And my property's well off to the side of it but that I know the town has been out there because they came to my property to do repairs on that swale and that drain and like I said this is spring fed, there's constantly water coming in and water has to go out somewhere. If you start disturbing this and start getting closer to those I think we're looking for a problem here plus reducing the size of the lot, it's 1.26 acres because there's two lots, New Windsor and Cornwall school district as is my property the two lots.

MR. TORPEY: But you're lot number 5?

MR. MILMORE: I'm lot number 5.

MR. TORPEY: Where is his driveway coming in off Birch?

MR. MILMORE: No, I'm on lot number 5 of the original Benedict Pond coming off Dean Hill Road says lands of Milmore. This property is behind my property, this is an earthen dam here. I'm here, there's an earthen dam between the pond and there's also a drain over in this area somewhere, it allows that water to drain somewhere.

MS. LOCEY: Okay.

MR. MILMORE: So I'm against it.

MR. BACH: I would point out that the lot was created with the approval of the town and I would assume that those issues were addressed by the planning board at the time the subdivision was approved.

MR. MILMORE: Well, after the subdivision was approved, let me point out that this area flooded flooding all those houses east of this location because there was a problem with that drain and the town had to act on it. Now they originally thought they were going to have to re-dig a culvert in order to do something with it but whatever correction they made has stood up to this point but any disturbance of that earthen dam, the drain, moving the building closer to it can greatly affect that pond, the ecological system of that pond and I don't want to be living on a mud pit because the pond suddenly went south or went east so to speak.

MR. BACH: Sounds to me if the town was aware of these issues before that they have addressed them and I'm assuming that they'd have to do so in the present, in the future rather.

MR. MILMORE: Which would add a big expense to the town because you're looking to build a house closer to the swale and to the drain.

MR. KANE: We just we're not going to debate this this evening.

MR. MILMORE: I oppose it.

MR. KANE: Anybody else for this particular hearing?
Yes?

MR. CROTARI: My name is Allen Crotari, I oppose it for

the same reasons that Mr. Milmore, I live at 49 Dean Hill Road, I personally witnessed the flooding, saw the emergency crews respond for the pond that drains very precariously. Disturbing that area or the dam can cause problems and you can't replace that pond, there's also wildlife in this area, I don't know if anyone's looked at the impact on the environments with this permit, you've got birds, you've got turtles, you've got fish, you've got everything in that area, building that close to that pond with pre-existing problems that Mr. Milmore has already discussed I think it's a fragile situation so I object to it.

MR. KANE: Thank you. Anybody else? We'll close the public portion of the meeting and ask Nicole how many mailings we had.

MS. JULIAN: On April 24, 2009, I mailed out 34 addressed with no response.

MR. KANE: Okay.

MR. MILMORE: Can I ask a question? How many mailings were there?

MR. KANE: Thirty-four.

MR. MILMORE: How many responses?

MR. KANE: None.

MR. MILMORE: I got a mailing.

MR. KANE: Did you mail in a response?

MR. MILMORE: No.

MR. KANE: Then you're here, this is mailed in responses, we know you're here, it's on the record, we have three individuals here, there were 34 mailings,

three individuals here, no mailed responses.

MR. MILMORE: Thank you.

MR. KANE: Okay, where was the access to this house going to be?

MR. BACH: Off Birch Drive.

MR. KANE: And is this where the proposed house is right here?

MR. BACH: Yes, that is correct.

MR. KANE: What would happen if you moved that home that way further away from the pond?

MR. BACH: Then your offsets would be further compromised, the lot width they would certainly not get any wider, the side yards would be changed.

MR. KANE: Right, and it wouldn't be as close to the pond.

MR. BACH: I believe that the engineer took the location into consideration, he felt that was the best practical place to locate a house in consideration of the pond.

MR. KANE: Okay, that's an answer and then the rest of the property?

MR. BACH: The rest of the property would be worthless to try to work it.

MR. KANE: There are no easements going through where you're proposing to build the house?

MR. BACH: No, the easement stops at the property line at 25 foot wide utility easement.

MR. KANE: And as far as you're concerned, you're not going to be creating any water hazards or runoffs?

MR. BACH: No.

MR. KANE: Cutting down substantial trees and vegetation?

MR. BACH: Just what's going to be immediately required for the construction, the rest of it will be left natural.

MR. PETRUKHIS: We're interested in preserving as much as possible.

MR. KANE: Further questions from the board?

MS. LOCEY: No, I think the gentleman from the audience had some legitimate personal concerns, however, I think those are planning board issues which should have been addressed prior to the subdivision being approved.

MR. KANE: Well, you still have to go back to the planning board, is that correct?

MR. BACH: No, all we need is the variance to get a building permit.

MR. TORPEY: They're only here for the variance.

MR. KANE: Right, that's all we can talk about. Any other questions?

MR. BEDETTI: I have a question the gentleman brought up was there some question of property line overlaps or--

MR. BYWATER: There is to me.

MR. KANE: It's nothing that we can address, this is a court issue that's honestly it's nothing that we can address as a zoning board. We don't have the right to go there.

MR. TORPEY: Just here for a variance.

MR. BACH: There's nothing on file and they do have title insurance based upon the description.

MR. KANE: No further questions. I'll accept a motion.

MS. LOCEY: I'll offer a motion to grant the requested variances on the application of New-Gen Construction for James Fini as detailed on the agenda of the New Windsor Zoning Board of Appeals dated May 11, 2009.

MR. TORPEY: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

FORMAL_DECISION:

RALPH RUIZ
KIMBERLY VOLPE
HIGHVIEW ESTATES
ED BIAGINI
CAR CARE
GLODE NEON SIGNS
FRANCES LEWIS
STEVEN CATANIA
MAVIS TIRE
JOAN THIELE
RICHARD JULIAN

MR. KANE: Formal decisions. We have a number of formal decisions to take a vote on, if you want we'll take them all in one vote. I'll accept a motion.

MR. TORPEY: That's fine.

MS. LOCEY: I will offer a motion to accept the formal decisions as detailed on the Zoning Board of Appeals agenda dated May 11, 2009.

MR. BEDETTI: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: Motion to adjourn?

MR. BEDETTI: So moved.

MR. TORPEY: Second it.

ROLL CALL

May 11, 2009

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MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer

